



ANGLERS OF THE AU SABLE

An affiliated member of the Federation of Fly Fishers

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May 25, 2023

Via Email and First Class Mail

Shannon Lott, Director
Michigan Department of Natural Resources
Executive Division
P.O. Box 30028
Lansing, MI 48909
DNR-Director@Michigan.gov

In Re: Memorandum of Understanding between the Department of Natural Resources (“DNR”) and Department of Military and Veterans Affairs (“DMVA”) Regarding State Land Use Permits for Military Exercises Related to Camp Grayling dated April 21, 2023

Dear Director,

In reviewing the above referenced MOU, the Board of the Anglers of the Au Sable have a number of questions and are seeking clarification on several points in order to understand how it will be implemented, and to enable us to explain this to our membership accurately.

1. The DNR website states that the DMVA “may annually apply for land use permits”, but the DNR Policy and Procedure 26.04.04 specifies that completed applications for event and non-event land use permits be submitted at least 60 days in advance of a proposed use start date. Will the DMVA be required to submit applications for such permits only once a year or at least 60 days before each proposed land use?
2. Section Ia of the MOU stipulates a “narrowly tailored use of tax reverted State Land by the Michigan National Guard for the purpose of conducting training exercises related to Camp Grayling”. In comparing one section (Chester South Township, T29N,R2W) of the PDF map which accompanies the MOU to the Open Data GIS map of tax reverted land (<https://gis-michigan.opendata.arcgis.com/datasets/midnr::michigan-dnr-tax-reverted-lands/explore?location=44.831936%2C-84.603893%2C11.00>), parcels in Section 15,16, 21, and 22 appear to be depicted on the PDF map, but are not included

in the Open Data map. Anglers seeks clarification as to which map is an accurate depiction of the tax reverted land which is eligible for permitting under the MOU.

3. Both Section Ia and Section IIb references use by the “DMVA and Michigan National Guard” and “National Guard members”, respectively. Will the permittees under the MOU be limited to the Michigan National Guard, i.e. the Michigan Army National Guard and the Michigan Air National Guard which are the only branches of military under the auspice of the DMVA?

4. Section IIIId states military training areas will not take place in “protected and sensitive areas”. Can you provide a definition of “protected and sensitive”?

Related to this issue, the white paper provided by the DMVA in connection with the original request for an additional 168,000 acres states:

- “CG manages its natural resources in accordance with the CG Integrated Natural Resources Management Plan (INRMP), which has been developed by CG ENV pursuant to the Sikes Act.
- The Sikes Act mandates that every military installation that impacts natural resources needs to develop and implement an INRMP that is approved by military and non-military stakeholders – in the case of CG, the non-military stakeholders are the MDNR and the USFWS.”

What environmental assessments will be required before a land use permit is granted by the DNR?

5. Under Section IIIIf, can you advise the method that public service announcements will be conveyed to the public, what information will be conveyed, and how far in advance such notifications will be required?

6. Section IIIg1 delineates “small formation activity” involving less than 500 National Guard members and up to 100 “affiliated partner members”. Can you define “affiliated partner members”? Would this include third party contractors and/or military personnel that are not members of the Michigan National Guard?

7. Section IIIg2 specifies “Controlled trials of cyber and electronic warfare technologies”. The use of the word “trials” seems to indicate an experimental and/or testing of technologies. Is this true? Please define what “trials” means.

8. Cyber: It should be noted that cyber activity need not include any additional land to implement (i.e., Col Kelly Hughes quote from 2015: “We can do this mission from anywhere-we do not have to physically relocate to do it. As long as we have the connectivity, we can operate from home station”; Michigan National Guard has successfully conducted cyber warfare training on its existing base during its Operation “Cyber Strike”; Michigan National Guard already has 4000 miles of fiber on its Merit Cyber Range). Therefore, we question the necessity for additional land for cyber activities, and ask that you indicate what rationale has been given to the DNR for the inclusion of cyber activities in the MOU?

Electronic Warfare: Electronic warfare technologies encompass the entire electromagnetic spectrum (radio wave, microwave, infrared, ultraviolet, x-ray and gamma rays) and conceivably include electromagnetic attack, support and/or protection. There are a myriad of emerging electromagnetic weapons being utilized and developed for use by the military. Will the DNR require that the weapons to be utilized under a land use permit are disclosed to the DNR staff on applications? Once identified, who within the DNR has the expertise to evaluate the possible effects of such weapons on people, wildlife, and the environment?

Does DNR have studies or other information that confirms that the electromagnetic warfare weaponry is not experimental in the sense that the nature and scope of its effects on people, as well as flora and fauna, are clearly established and well-known? If so, what are the known effects? If not, will DNR require this information prior to considering authorizing the use of such weaponry on Michigan property for training or any other purpose?

9. Section IIIg3 specifies low impact or light maneuver training. What activities fall within these descriptions?

10. IIIh1 specifies that live fire or any similar kinetic activity will not be permitted. Many electromagnetic warfare weapons, such as the Army’s patented EMP rifle modification which turns a standard M4 rifle into an electromagnetic pulse gun, do not utilize ammunition traditionally defined as “live”- but electromagnetic directed energy may be more destructive than bullets. Other anti-drone weapons may utilize radio and/or additional technologies which may interfere with communications and/or navigation of wildlife such as birds and bats. How will the DNR evaluate and/or regulate the use of electromagnetic energy?

11. Section IIIh3 specifies that activity within 3000 feet of any inland lakes or designated trout streams listed in Fisheries Order 210.23 will not be permitted. Does this include the airspace as well as land?

In addition to hydrology, wetlands are of primary conservation concern to Anglers. Wetlands play an extremely important part in maintaining the health of the watersheds, as highly productive and biologically diverse systems that enhance water quality, control erosion, maintain stream flows, sequester carbon, and provide a home to at least one third of all threatened and endangered species. In comparing one section (Chester South Township, T29N, R2W) of the PDF map which accompanies the MOU to the National Wetland Inventory, the following quarter section parcels appear to contain wetlands*:

Section 15: NESE, NWSE, SESE, NWSW, SWSW, NENW, SENW

Section 16: SWSE

Section 21 NWNE, NENE

Section 22: NENE

Will wetlands be excluded?

12. Section IIIi specifies that the Michigan National Guard will pay for their land uses permit applications according to the same fee schedule that applies to the general public. Does this mean that the DMVA will not be exempt under the fee guidelines as a governmental agency?

13. Section V states that the DNR and DMVA assume no liability for any actions or activities conducted under the MOU, except to the extent that recourse or remedies are provided by federal or state law. If the DNR's definition of "affiliated partner members" extends beyond members of the Michigan Army National Guard and/or the Michigan Air National Guard (Section IIIg1), will the DNR require insurance or bonding? If so, how will the amount be calculated?

In the event of any environmental contamination or degradation, would the DMVA/National Guard be held accountable in accordance with EGLE remediation standards and procedures? Or would they instead be governed by the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as seems to be the case in connection with the cleanup of PFAS contamination?

14. Section VII states that the MOU may be modified upon the mutual agreement of the DNR and DMVA. Will the public be notified of any such modification, and, if so, in what manner and with what timeframe and process for public comment will be provided?

15. We note that the MOU does not contain provision for complaints or reports of violation from the public who will be using this land simultaneously with the National Guard. How would these be received and responded to by the department? In the event of

violations by the National Guard, what will be the remedies? By what process may claims be filed with DNR, DMVA or other offices and agencies involved in these activities and what standards govern such claims? Is the statement about not assuming liability intended to constitute an assertion of government immunity from liability?

Anglers would like to meet with the department representatives to address these questions at your earliest convenience.

Awaiting your reply, I remain,

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Joe Hemming', with a stylized flourish at the end.

Joe Hemming
President
Anglers of the Au Sable

* A FOIA request for the GIS shape file(s) for the parcels identified in the MOU pdf map, but as of the date hereof, are advised that the records do not exist. Therefore, the accuracy of the parcels included on the pdf map cannot be verified.